A THIRTEENTH 13

ADDRESS

TO THE

FREE CITIZENS,

AND

FREE-HOLDERS

OF THE

CITY of *DUBLIN.*

DUBLIN:

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A THIRTEENTH ADDRESS TO THE FREE CITIZENS, AND FREE-HOLDERS OF THE CITY of DUBLIN.

DUBLIN:

A THIRTEENTH ADDRESS, &c.

AS the *Courts* of *Law*, which I have conciſely deſcribed, with the Power, Office and Duty of the ſeveral *Judges*, in *my Twelveth Address*, would be but imperfect and maimed, without JURIES, who, by GOD's gracious Providence, and the Wiſdom and Virtue of our Anceſtors, are the *Chief*, the ONLY JUDGES, where *Facts* are to be proved, or tried; ſo I ſhall beg Leave to poſtpone what I intended to offer *on the Diſeaſes incident to the Body Politic*, and to interpoſe a brief Account of the Inſtitution, Office and Duty of JURIES, as I find it abſtracted from the moſt authentic Law-Writers, by the learned and worthy Author of that moſt excellent Book, called ENGLISH LIBERTIES; and in a moſt uſeful Pamphlet publiſhed here, by our worthy Fellow-Citizen, Mr. *John Smith*, the Bookſeller, intituled, The ENGLISHMAN's RIGHT.

IN the primitive Ages of the *Britiſh* Government, not only the Laws were made by the general Voices of the People aſſembled, in their *Motes*, or great Councils, as before obſerved; but all Judgments and Decrees, in civil and criminal Cauſes, were pronounced, by the Majority of the Aſſembly of the People.

CÆSAR, in his *Commentaries*, Book the Sixth; with a Kind of Admiration, relates a Point of *Britiſh* Hiſtory, which, to me, conveys pregnant Proof of the Being and Eſtabliſhment of Juries, or Inqueſts, in his Time.——He obſerves, that "if a Man of Quality be found dead, his Friends and *Neighbours* come together to enquire the Cauſe of his Death. And, if the Wife be ſuſpected of the Death of her Huſband, ſhe is examined, by *theſe Neighbours*, with

as great Strictneſs and Severity, as if ſhe were a Servant. And, if ſhe be FOUND GUILTY, ſhe is *burned* to Death." Here it is remarkable, that this has always been, and ſtill continues to be the Law of *Britain*, and that *Cæſar*, in his Relation of the Fact, uſes the very indentical Words, which, from all Antiquity, have been uſed, in Law Procedings, when the finding a *Verdict* by a Jury is to be expreſſed; *Compertum eſt.*

BUT this great Method of Trial by JURIES was regulated in the Time of the *Saxons*, in the Reign of *Æthelðred*, about the Year 675, that is, about three hundred Years before the *Norman* Invaſion, falſely called, the *Conqueſt*. Then the Number of the JURORS was defined, by a Law, which ordained, that "in every *Hundred*, there ſhould be a *Court*; of which TWELVE ANTIENT FREEMEN, together with the *Lord of the Hundred*, all ſworn, that *they ſhould not condemn the Innocent*, or *acquit the Guilty*, were appointed the SOLE JUDGES."

BUT, as the Law became more complicate and voluminous, in Proceſs of Time, it was found expedient to add to every Court, *other Judges*, choſen from among thoſe, who had diſtinguiſhed themſelves by the greateſt Wiſdom, and the moſt extenſive Knowledge and Experience in the Laws of Nature and Nations, particularly of their own Country. But, tho' ſuch Men have been appointed to declare the Law, and to be the Guardians of the Rights of the Crown; yet, in the primitive Ages, they were looked upon as little more than *Co-aſſeſſors* to the *antient conſtitutional Judges*, THE JURY; and whatever the *Pride*, or *Corruption* of ſome *modern Judges*, may, vainly, prompt them to arrogate; it will be found, they are ſtill, but little better, where JURIES have Senſe enough to know their Office and Duty, and Virtue and Reſolution enough to put them in Execution. This will appear more plain, under the following Heads.

SECT

SECT. I.

Of the *Advantages* Britiſh *and* Irish *Subjects enjoy in* Trials *by* JURIES.

IT is one of the miſerable Follies of depraved Nature, that it commonly ſlights preſent Enjoyments, and rarely rates the good Things it poſſeſſes at their true value, till it is deprived of them. This grand Privilege of *Trials*, by our Country, that is, by *JURIES*, as it ſeems to have been as Ancient as the Government, or firſt Form of Policy in this Iſland; being not unknown to the ancient *Britains* (as appears by their Books and Monuments of Antiquity) practiſed by the *Saxons* and confirmed, ſince the Invaſion of the *Normans*, by *Magna Charta*, as you have, before heard, and continual Uſage; ſo it is a Thing of the higheſt Moment, and eſſential Felicity, to all *Britiſh* and *Iriſh* Subjects. For, look abroad in *France*, *Spain*, *Italy*, or, indeed, (almoſt) where you will, and obſerve the miſerable Condition of the Inhabitants, either entirely ſubjected to the arbitrary Luſts of Tyrants, who Plunder, diſmember or ſlay them, according as the Humour takes them, and many Times without the leaſt Provocation, meerly for Sport, and to gratifie a ſavage Cruelty: Or at beſt, you will behold them under ſuch Laws, as render their Lives, Liberties and Eſtates, liable to be diſpoſed of, at the Diſcretion of *Strangers* appointed their Judges, moſt times mercenary, and Creatures of Prerogative; ſometimes malicious and oppreſſive, and too often partial and corrupt. Or, ſuppoſe them ever ſo juſt and upright; yet, ſtill has the Subject no Security againſt Subornations, and the Attacks of malicious, falſe and unconſcionable Witneſſes; yea, when there is no ſufficient Evidence, upon meer Suſpicions, they are obnoxious to the Tortures of the Rack, which often make an innocent Man confeſs himſelf guilty, meerly to get out of preſent Pain: Or if he do, with invincible Courage,

endure the Queſtion (as they call thoſe Torments) he is many Times ſo ſpoiled in his Limbs, as he ſcarce ever is his own Man again.

Whereas ſuch has been the Goodneſs of God, and the prudent Care of our Anceſtors, that, to our ineſtimable Happineſs, we are born, and live, under a mild and righteous Conſtitution, where all theſe Miſchiefs may be prevented; where none can be legally condemned, either by the Power of ſuperior Enemies, or the Raſhneſs or ill Will of any Judge, nor by the bold Affirmation of profligate Evidence: For, by a Fundamental Law in our Government, No Man's Life (unleſs it be in Parliament, which is a ſupream Court, and it is ſuppoſed will never do any Man Wrong) ſhall be touched for any Crime whatſoever, but upon being found Guilty on two ſeveral Trials (for ſo may that of the Grand and Petty-Jury be called) and the Judgment of twice Twelve Men at leaſt all of his own Condition and Neighbourhood, and upon their Oaths [*Coke* 3 Part of *Inſtit.* p. 40.] That is to ſay, *Twelve*, or more, to find the Bill of Indictment againſt him, and Twelve others to give Judgment upon the general Iſſue of *Not Guilty:* All which Jurors muſt be honeſt, ſubſtantial, impartial Men, and being Neighbours of the Party accuſed, or place where the ſuppoſed Fact was committed, cannot be preſumed to be unacquainted either with the Matters charged, the Priſoner's Courſe of Life, or the Credit of the Evidence: And all theſe muſt be fully ſatisfied in their Conſciences, that he is Guilty, and ſo unanimouſly pronounce him upon their Oaths, or elſe he cannot be condemned. For, the Office and Power of theſe Juries is *Judicial:* They only are the Judges from whoſe Sentence the Indicted are to expect Life or Death; upon their Integrity and Underſtanding the Lives of all that are brought into Judgment, do ultimately depend; From their Verdict there lies no *Appeal*: By finding Guilty, or Not Guilty, they do complicately reſolve both Law and Fact.

Judge

Judges, are made by Prerogative, and many times heretofore they have been preferred by corrupt Miniſters of State, and may be ſo again in Time to come; and ſuch advanced, as would ſerve a preſent Turn, not always thoſe of the moſt Integrity and Skill in the Laws: Their Places are ſo honorable, and Profitable, and their Tenure ſo tickliſh, viz. *durante beneplacito*, meerly during Pleaſure, that they lie under no ſmall Temptations, which perhaps with ſome may be nevertheleſs unlikely to prevail; for, their having generally been wont to take Fees, they are concern'd in ſo many Cauſes, that they are the oftener ſubject to be tempted, and are ſo few, that they may be the eaſier corrupted: They cannot be challenged, and may be apt to think themſelves above any Action, and thence be encouraged to ſtrain a Point now and then. The major Part of them agreeing, is enough; they are never ſworn at each particular Trial, nor ever at all but once, and that but in general Terms. I ſay, all theſe Things may poſſibly happen to biaſs ſome Judges. But nothing of that kind can reaſonably happen to a Jury. For, 1. They are returned by a ſworn Officer. 2. Muſt be Men of a clear Reputation, and competent Eſtate. 3. Being Neighbours, they may know ſomething of the Buſineſs on their own Knowledge. 4. Their Office is but a Trouble, not accompanied with any great Honor, nor any Profit at all. 5. They are all ſolemnly ſworn to each particular Cauſe. 6. The Party may challenge thirty-five in Caſe of Treaſon, and twenty of them in Felony, without any Cauſe; and as many more as he can aſſign Cauſe againſt. 7. Of the Grand Jury, twelve at leaſt muſt join in the Verdict, and of the Petty Jury, every Man of the Twelve muſt conſent upon his Oath, or elſe it is Nothing. And laſtly, if they give a corrupt Verdict between Party and Party, they are liable to an *Attaint*. [But I do not find any Attaint lies in criminal Cauſes, where the King is a Party.]

Now, let any Man of Senſe conſider, whether this Method be not more proper for *boulting* out the Truth, for finding out the *Guilty*, and preſerving the *Innocent*, than if the whole Deciſion where left to the Examination of two or three, whoſe *Intereſt*, *Paſſion*, *Haſte*, or *Multiplicity* of Buſineſs may eaſily betray them into Error.

Deſervedly therefore is this Trial by *Juries* rank'd amongſt the choiceſt of our fundamental Laws, which whoſoever ſhall go about openly to *ſuppreſs*, or craftily to *undermine*, and render only a Formality, does *Ipſo Facto* attack the Government, and brings in an Arbitrary Power, and is an Enemy and Traitor to his King and Country; for which Reaſon the Parliaments have all along been moſt zealous for preſerving this great Jewel of Liberty, Trials by Juries; having no leſs than fifty-eight ſeveral Times, ſince the *Norman* Invaſion, been eſtabliſhed and confirmed by the legiſlative Power, no one Privilege beſides having been ever ſo often remembered in Parliament.

SECT. II.

Of the neceſſary Qualifications of JURORS.

AS the Office of Juries is of ſuch great Importance, ſo the Wiſdom of our Law has provided, that the ſame ſhall be ſupplied with Perſons of Ability, Honeſty, Integrity, and Indifferency: For, (as my Lord *Coke* ſaith, 1. Part *Inſtit.* Sect. 234, Fol. 155.) He that is of a Jury muſt be *Liber Homo*, that is, not only a *Free Man*, and not Bond, but alſo one that hath ſuch *Freedom of Mind*, as he ſtands indifferent, as he ſtands unſworn. 2. He muſt be *Legalis*, Loyal; and by the Law every Juror that is returned for the Trial of any Iſſue, or Cauſe, ought to have three Properties. 1. He ought to be dwelling moſt *near* to the Place where the Queſtion is moved. 2. He ought to be moſt ſufficient, both for Underſtanding, and Competency

Competency of Estate. 3. He ought to be least suspicious, that is, to be Indifferent, as he stands Unsworn. In a Word, Jurors must be Free of, and from, all Manner of Bondage, Obligations, Affections, Relations and Prejudices; they must be the Peers, or Equals of the Party they are to try; they must be of full Age, twenty-one Years old, or upwards, not *Outlaw'd*, never *attainted* nor *convicted* of Treason, Felony, false Verdict, Perjury, or adjudged infamous: They were Antiently, all Knights, as we read in *Glanvil* and *Bracton*, and they must still be Persons of Worth and Repute; and as they are returned by a sworn Officer, the Sheriff, so they of the Petty Jury must be every one sworn every several Trial by a particular Oath, the more to remind them of their Duty. Nay, it should seem in antient Times, though the Office and Duty were still the same as at this Day; yet, their Honour and Dignity were much greater: The *Mirror of Justices* makes no Scrup'e to call them, *Judges*; and Dr. *Cowel* in his Interpreter tells us, Juries *were antiently Associates and Assistants to the Judges of the Court in a kind of Equality*, whereas now a-days they attend them in great Humility: And cites the Customary of *Normandy*, and *Lambard*, as being of the same Sentiments. But I desire not to bring in Innovations, only that *British* Subjects may preserve their antient Rights and Privileges, inform themselves of their Duty and Office by Law, that so they may uprightly discharge the same to GOD and their King and their Fellow Subjects.

SECT. III.

Of GRAND JURIES, *their Duty, and the great Importance of their Office.*

JURIES are of two Sorts: The *Grand Jury*, so called, both because it consists of a greater Number than *Twelve*, as commonly 21, 19, 17, or the

☞ the like, [but *Note*, They can make no Verdict or Preſentment, unleſs Twelve at leaſt of them agree, and then what they do is valid, though the reſt do not conſent;] as alſo becauſe generally they are of the greater Quality, and likewiſe in Reſpect of their Power, becauſe the Extent of their Office is more great and general, as extending to all Offences throughout the whole County for which they ſerve. 2. The *Petty Jury* in Caſes criminal, called commonly the *Jury of Life and Death*, which always conſiſts of twelve Men, neither more nor leſs, who muſt every Man agree, or elſe it is no Verdict.

The OATH *adminiſtred to the* GRAND JURY, *is as follows.*

" YOU ſhall diligently inquire, and true Preſentment make, of all ſuch Matters, Articles, " and Things as ſhall be given you in Charge, as of " all other Matters and Things as ſhall come to your " Knowledge touching this preſent Service; the " King's Counſel, your Fellows and your own, you " ſhall keep ſecret: You ſhall preſent no Perſon for " Hatred or Malice, neither ſhall you leave any one " unpreſented for Fear, Favour or Affection, for " Lucre or Gain, or any Hopes thereof, but in all " Things you ſhall preſent the Truth, the whole " Truth, and nothing but the Truth, to the beſt of " your Knowledge. So help you God."

The Office of a Grand Jury, or Grand *Inqueſt*, (for by both thoſe Names it is promiſcuouſly called) is principally concern'd in two Things, *Preſentments* and *Indictments*, the Difference of which is thus: The firſt is, when the Jury themſelves, of their own Knowledge or Inquiry, do take Notice of ſome Crime, Offence or Nuſance, to the Injury of the Publick, which they think fit ſhould be puniſhed or removed; and in order thereunto, do give the Court notice thereof in Writing briefly and without Form, only

only the Nature of the Thing and the Perſon's Name of the Place. And this is called, a *Preſentment*, being the Matter whereon to form an Indictment, from which the Preſentment differs in theſe two Reſpects. 1. In that it is always originally the Act of the Grand Jury. And, 2. That it is not yet drawn up in Form; whereas Indictments are commonly drawn up, either by the Order of the Court, or at the Inſtance of ſome Proſecutor, and are brought before, and delivered unto the Grand Jury, and the Witneſſes ſworn attend them, who examine the ſaid Witneſſes, and, as they think fit, return the Indictments indors'd either *Billa Vera*, [that is, a true Bill,] or *Ignoramus*, [*We are Ignorant*,] that is, we do not find the Matter, or there does not appear to us ſuch ſufficient Grounds for the Accuſation, that the Perſons Life and Reputation ſhould be brought into Queſtion.

From whence it appears, that the End of their Office is likewiſe two-fold. 1. To inquire after, and give Notice of all Crimes, Offences, Nuſances, *&c.* in the County for which they ſerve, which by reaſon of their Inhabitancy and Eſtates therein, they are preſumed to have beſt Opportunity to diſcover, and to find Bills againſt Malefactors, where there are good Grounds for the ſame, that ſo they may be brought to Trial, if they are forth-coming, or may be proceded againſt to the Outlawry, if they are fled for their ſaid Offences. 2. To preſerve the Innocent from the Diſgrace and Hazards, which ill Men may deſign to bring them to, out of Malice, or through Subornation, or other ſiniſter Ends: For, ſo tender is the Law, of the Reputation and Life of a Man, that it will not ſuffer the one to be ſullied, by the Party's holding up his Hand at the Bar, and the other indangered by a Trial, until firſt the Matter and Evidence againſt him have been ſcanned, examined, and found by a Grand Jury, upon their Oaths, againſt him. Therefore, you ſee by their Oaths, They are ſworn, not only, to inquire, but diligently inquire, not to be negligent or ſlothful, nor to take Things upon truſt,

truſt, or hurry them over careleſsly, but to weigh the Circumſtances, and ſift the Witneſſes, and ſearch out the Truth of ſuch Informations as come before them; and to reject the Indictment, if it be not ſufficiently proved; and if they have reaſonable Suſpicion of Malice, Subornation, or wicked Deſigns againſt any Man's Life or Eſtate, in ſuch as offer or come to ſwear to the Bill of Indictment, they are bound by Law, as well as in Conſcience, to uſe all Diligence to diſcover the Villainy; and if it appear to them (whereof they are the legal Judges) to be a Conſpiracy, or malicious Conſpiracy, againſt the Accuſed, they are bound, not only to reject ſuch Bill of Indictment, but forthwith to indict all the Conſpirators, with their Aſſociates and Abettors: And that this is a main Part of the Grand Jury's Office, appears not only from legal Reaſon, but by an expreſs Statute, *viz.* 25 *Edw.* 3. 4. and 42 *Edw.* 3. 3. which ſays, *That for the preventing Miſchiefs done by* FALSE ACCUSERS, *none ſhall be put to anſwer, unleſs it be by Indictment, or Preſentment of good and lawful People of the Neighbourhood where ſuch deeds be done*; that is to ſay, by a Grand Jury.

The Grounds upon which Grand Juries are to proceed in giving their Verdicts, are either,

1. From their own Knowledge, and ſo they may find an Indictment againſt a Perſon, though there be never a Witneſs at all to it; and a Petty Jury may in like manner find a Perſon Guilty of a Felony or Murder, whereof he ſtands indicted, though no Witneſſes appear againſt him to prove it; and the Reaſon thereof is, becauſe the Juries being always of the *Vicinage*, the Law ſuppoſes they may know the Matter of their own Knowledge; and therefore, in all ſuch Caſes, when a Jury is charged with a Priſoner, and after the Indictment read, Witneſſes fail to appear, the Court always ſpeaks thus to the Jury: *Gentlemen, here is* A. B. *ſtand indicted of a Crime, but here's no Witneſſes come againſt him, ſo that unleſs, on your own Knowledge, you know him Guilty, you muſt acquit him*: And certainly, if

if the Jury's Knowledge of a Man's Guilt, is enough to condemn him, I see not why their personal Knowledge of a Prisoner's Innocency, or of the Witnesses Swearing falsely, should not be sufficient to acq it him.

2. The other Ground upon which the Grand Juries are to proceed, is *Testimony of Witnesses*; and this is called EVIDENCE, because it ought to be such as may make the Matter clear, manifest plain and evident to the Jury; and of this Evidence the Jury, are the only, proper Judges; therefore, they ought (according to their Oath) diligently enquire into the Quality, Repute and Circumstances of the Witnesses, the Likelihood of what they depose, and whether they do not swear out of Malice, Subornation, Self-interest, Combination, or some ill Design; which to discover, they will do well to examine them a-part, to note their Variations and Contradictions, to ask them sudden Questions, and what Questions are pertinent, not the Judges, but the Jury only can determine; for they may know how to make use of them towards Discovery of the Truth, though the Judge do not, and it is they are upon their Oaths, not he; they must satisfie their own Consciences, the Judge has nothing to do to intermeddle; he is bound by their Verdict. Let Witnesses be never so rampantly positive, yet if the Jurors have good and reasonable Grounds, not to believe them, they will, they must, remain as ignorant of the Party's Crime as before: We find this expresly asserted for Law in our Books, as *Style*'s *Reports*, *Lib.* 11. though there be Witnesses, who prove the Bill, yet the Grand Inquest is not bound to find it, if they see Cause to the contrary: So *Coke Lib.* 6. The *Judges* use to determine *who* shall be sworn, and what shall be produced as Evidence to the Jury; but the Jury are to consider what Credit or Authority the same is worthy of. If a Grand Jury are not Judges of Evidence, they signifie nothing. If (as some would persuade us) because People swear desperately, though they do not believe them, they shall be bound to find the Bill, then they signifie nothing, and are no

Security

Security to preserve Innocency. A lewd Woman once resolved to indict the then Archbishop of *Canterbury* for a Rape. She swore it, no doubt, verily heartily. According to this new Doctrine, of going according to Evidence; the Jury must presently have found the Bill; the Archbishop must have been committed to Prison, suspended from Ecclesiastical Jurisdiction, his Goods and Chattles throughout *England* inventoried by the Sheriffs; would it, think you, in that Case, have been a good Excuse for the Grand Jury, to have said, that though they believed in their Conscience the Baggage swore false; yet she swearing it positively, they, as so many Parish Clerks, were but to say *Amen* to her Oath of the Fact, and to find *Billa Vera* against that eminent Prelate? And if the Jury be Judges of the Credibility of Evidence, in this Case, and may go contrary to it, Why, I pray, may they not have the same Liberty, where they find good Cause, in others?

If an Indictment be laid against a Man for criminal words, said to be uttered in a Dialogue, or Discourse, though the Witnesses roundly swear all the express words in the Indictment, yet unless they will relate and set forth the Substance of the whole Talk, it is impossible the Jury should judge of the Matter: For the foregoing and subsequent words may render Expressions that are innocent and loyal, which taken to halfs, may be rank Treason; as if one should say, *To affirm the King has no more Right to the Crown of* England *than I have, (which is the Opinion of the Jesuits, of His Majesty, if once excommunicated by the Pope) is detestable Treason.* And two Men at some distance, not well hearing, or remembring, or maliciously designing against his Life, should swear—— That he said, *The King had no more Right to the Crown than he had.* Now that the Man did utter these very Words is true; but if you ask the Evidence the rest of the Dialogue, they shall tell you there was much more Discourse, but they cannot remember it; what Satisfaction is this to a Jury? Or would it not be hard,

for

for a Man to be put to hold up his Hand at the Bar, under the frightful Charge of Treaſon in this Caſe? Or if a Miniſter, in his Sermon, ſhould recite that of the Pſalms, *The Fool hath ſaid in his Heart there is no God*: Deſigning Evidence may now come and charge him with Blaſphemy, and ſwear that he ſaid, *There was no God*: And aſk them what Expreſſions beſides he uſed, may excuſe themſelves, and ſay, It is a great while ago, we cannot remember a whole Sermon, but this we alſo poſitively ſwear, *He ſaid there was no God.*

The Inquiry of a Grand Jury ſhould be ſuitable to their Title, a *Grand Inquiry*; elſe inſtead of ſerving their Country, and preſenting real Crimes, they may oppreſs the Innocent, as in the Caſe of *Samuel Wright* and *John Good*, at a Seſſions in the *Old-Baily*, about *December* 1681. *Good* indicts *Wright* for treaſonable Words, and ſwore the Words poſitively; but after a grand Inquiry, the Grand Jury found that *Wright* only ſpoke the Words as of others; thus, *They ſay ſo and ſo*,——and concluded with this,——*They are Rogues for ſaying it*: And alſo *Good* at laſt confeſſed that *Wright* was his Maſter, and corrected him for Miſdemeanors; and then to be reveng'd, he comes and ſwears againſt him, which he confeſſed he was inſtigated to by one *Powel*: So the Grand Jury finding it to be but Malice, return'd the Bill *Ignoramus*; whereas if they had not examim'd him ſtrictly, they had never diſcover'd the Intrigue, and the Maſter had cauſeleſly been brought to great Charge, Ignominy, and Hazard.

The judicious *Dalton*, p. 539. ſays well, *No leſs Care or Concern at all lies on the Grand Jury, then does on the Petty Jury*: People may tell you, *That you ought to find a Bill againſt any probable Evidence, for it is but matter of Courſe, a Ceremony, a Buſineſs of Form, only an Accuſation; The Party is to come before another Jury, and there may make his Defence.* But, if this were all, to what Purpoſe have we Grand Juries at all? Why are the wiſeſt, beſt Men in the County (for ſuch they are, or ſhould be) troubled? Why are they ſo ſtrictly ſworn? Do not flatter your ſelves; you of

the

the Grand Jury are as much upon your Oaths, as the Petty Jury; and the Life of the Man, againſt whom the Bill is brought, is in your Hands. The Lord *Coke*, 3 *Inſtit.* 33. plainly calls the Grand Jury-men all wilfully forſworn and perjured, if they wrongfully find an Indictment; and if in ſuch a caſe, the other Jury, through Ignorance, &c. ſhould find the Perſon Guilty too, you are guilty of his Blood as well as they. But, ſuppoſe he get off there, do you think it nothing to accuſe a Man upon your Oaths, of horrid Crimes, your very doing of which puts him, though never ſo innocent, to Diſgrace, Trouble, Damage, Danger of Life, and makes him liable to Outlawry, Impriſonment, and every thing but Death itſelf; and that too, for ought you know, may wrongfully be occaſioned by it, your raſh Verdict gaining Credit, and giving Authority to another Jury to find him Guilty: For if the Petty Jury find a Man guilty never ſo unjuſtly, the Law ſuffers no Attaint or other Puniſhment, to lie againſt them, for this very Reaſon, becauſe another Jury, *viz.* The Grand Inqueſt, as well as they, have found him guilty. If a Grand Jury find a Bill wrongfully againſt a Perſon, and it prove never ſo much to his Damage, he has no Remedy; for being upon their Oaths, the Law will not ſuppoſe any Malice. One of the Grand Jury cannot afterwards be of the Petty Jury, and why? Becauſe, ſays the Law, he has once already found the Party guilty, and if he ſhould not again, he muſt perjure himſelf. From all which it appears, what a Weight and Streſs the Law puts upon the Verdict of a Grand Jury; and it is remarkable too, that the Law directs them only to ſay, either *Billa Vera*, *It is true*; or *Ignoramus*, *We know not*; and never, *That it is not true*: Which ſhews that if they be doubtful, or not fully ſatisfied, the Indictment muſt be indorſed not *Billa Vera*, We know it is true; but *Ignoramus*, We doubt it, we do not know it, we are not certain it is true. If they find a Bill where they ought not, they wound their own Conſciences, and do an irreparable Damage to the Party

Party; but where they do not find the Bill, there is no harm done to any Body: For another Indictment may be brought, when there is better Evidence.

SECT. IV.

That JURIES *are Judges of Law, in some Respects, as well as of Fact.*

AMONGST other Devices, to undermine the Rights and Power of Juries, and render them insignificant, there has an Opinion been advanced, that they are only Judges of Fact, and are not at all to consider the Law: So that if a Person be indicted for a Fact, which really is no Crime in itself by Law, but is worked up by words of Form, as *Treasonably*, *Seditiously*, &c. if the Fact be but proved to be done, though the said wicked Circumstances do not appear, they shall be supplied by the Law, which you are not to take notice of, but find the Bill, or bring in the Person Guilty, and leave the consideration of the Case in Law to the Judges, whose Business it is.——Thus some People argue, but it is an apparent Trap, at once to perjure ignorant Juries, and render them so far from being of good use, as to be only Tools of Oppression, to ruin and Murder their innocent Neighbours with the greater Formality: For, though it be true, that Matter of Fact is the most common and proper Object of a Jury's Determination, and Matter of Law that of the Judges; yet, as Law arises out of, and is complicated with Fact, it cannot but fall under the Jury's Consideration. *Littleton*, *Sect.* 368. teaches us, that the Jury may, at their Election, either take upon them the knowledge of the Law, and determine both the Fact and Law themselves, or else find the Matter specially, and leave it to the Judges: It is by applying Matter of Fact and Law together, and from their due Consideration of, and right Judgment upon, both, that a Jury brings forth their Verdict. Do we not see in most General Issues, as upon Not Guilty pleaded in

Treason, Breach of the Peace, or Felony, though it be matter in Law, whether the Party be a Treſpaſſer, a Breaker of the Peace, or a Felon; yet, the Jury do not find the Fact of the Caſe by itſelf, leaving the Law to the Court, but find the Party Guilty, or Not Guilty generally? So that, though they anſwer not the Queſtion ſingly, what is Law, yet they determine the Law in all matters where Iſſue is joined. Is it not every Day's Practice, when Perſons are indicted for Murder, the Jury does not only find them Guilty, or not Guilty, but many times, upon hearing and weighing of Circumſtances, brings them in either guilty of the Murder, or elſe only of Man-ſlaughter, miſadventure, or in ſelf Defence, as they ſee cauſe. Beſides, as Juries have ever been veſted with ſuch Power by Law, ſo to exclude them from, our diſſeiſe them of the ſame, were utterly to defeat the end of their Inſtitution: For, then, if a Perſon ſhould be indicted for doing any common innocent Act, if it be but cloathed and diſguiſed in the Indictment, with the name of Treaſon, or ſome other high Crime, and proved by Witneſſes to have been done by him, the Jury, though ſatisfied in Conſcience, that the Fact is not any ſuch Offence as it is called, yet becauſe (according to this fond Opinion) they have no Power to judge of Law, and the Fact charged is fully proved, they ſhould at this Rate be bound to find him Guilty: And being ſo found, the Judge may pronounce Sentence againſt him, for he finds him a convicted Traytor, *&c.* by his Peers: And ſo Juries ſhould be made meer Properties to do the Drudgery, and bear the Blame of unreaſonable Proſecutions. But all this is abſurd, and abhorr'd by the Wiſdom, Juſtice and Mercy of our Laws.

In every Indictment Information, *&c.* there are certain Words of Courſe, called Matter of Form, as *Maliciouſly, Seditiouſly, with ſuch and ſuch an Intention* &c. And theſe ſometimes are raiſed by a juſt and reaſonable Implication in Law, and ſometimes are thruſt in meerly to raiſe a Pretence, or Colour of Crime where there is really none. Jury-men ought well to underſtand this Diſtinction, where the Act, or naked

Matter

Matter of Fact charged, is in itſelf a Crime, or Offence againſt Law; as killing a Man, levying War againſt the King, *&c.* There the Law does in pleading require, and will ſupply thoſe words; and if the Jury do find, and are ſatisfied, that the ſubſtance of the Charge is ſuch a Crime, and the Perſon guilty thereof, they are bound to find it, though no direct Proof be made of thoſe Circumſtantials. But, where the Act, or Matter of Fact is in itſelf innocent, or indifferent, there the Purport of theſe words (as that is was done *Maliciouſly* or with *ſuch* or *ſuch a deſign*) is neceſſary to be proved; for elſe there is no Crime, and conſequently no fit Matter to be put to Trial. In which caſe, the Grand Jury is bound in Conſcience and Law, to return an *Ignoramus*, and a Petty Jury *Not Guilty*.

SECT. V.

That Juries are not fineable, nor any way to be puniſhed under pretence of going contrary to Evidence, or againſt the Judges Directions.

MUCH of what we have ſaid of Grand Juries, is alſo applicable to Petty Juries, ſo that we need not repeat it; only I muſt anſwer one Objection. Some Jurymen may be apt to ſay, —— "If we do not find according to Evidence, though we have reaſon to ſuſpect the truth of what they ſwear, or if we do not find as the Judge directs, we may come into trouble, the Judge may fine us," *&c.* ——— I anſwer, this is a vain Fear: No Judge dares offer any ſuch thing; You are the proper Judges of the Matters before you, and your Souls are at ſtake; you ought to act freely, and are not bound, though the Court demand it, to give the Reaſons why you bring it in thus, or thus: For, You of the Grand Jury are ſworn to the contrary, *viz. To keep ſecret your Fellows Counſel and your own.* And you of the petty Jury are no way obliged to declare your Motives; it may not be convenient.

It was a notable Case before the Chief Justice *Anderson* in Queen *Elizabeth*'s days: A Man was arraigned for Murder; the Evidence was so strong, that eleven of the Jury were presently for finding him Guilty, the twelfth Man refused, and kept them so long that they were ready to starve, and at last made them comply with him, and bring in the Prisoner Not Guilty.

The Judge, who had several Times admonish'd this Jury-man to join with his Fellows, being surprised, sent for him, and discoursed him privately; to whom, upon promise of Indemnity, he at last owned that he himself was the Man that did the Murder, and the Prisoner was innocent, and that he was resolved not to add Perjury, and a second Murder to the first. ——— But to satisfie you, that a Jury is no way punishable for going according to their Conscience, though against seeming Evidence, and the Reasons why they are, and ought not to be questioned for the same, I shall here recite an adjudged Case, that of *Bushel*, in the two and twentieth Year of King *Charles* II. reported by the Learned Sir *John Vaughan*, whose Book was licensed by the then Lord Chancellor, the Lord Chief Justice *North*, and all the Judges then in *England*: The Case begins Fol. 135. and continues 150. the whole well worth reading; but I shall only select certain Passages. ———

The Case was this:

Bushel, and others of the Jury, having at a Sessions, not found *Pen* and *Mead* (two Quakers) guilty of a Trespass, Contempt, unlawful Assembly, and Tumult, whereof they had been indicted, were fined forty Pounds a Man, and committed till they should pay it. *Bushel* brings his *Habeas Corpus*, and upon the Return, it appeared, he was committed, ——— For, that contrary to Law, and against full and clear Evidence openly given in Court, and against the Directions of the Court in Matter of Law, they had acquitted the said *W. P.* and *W. M.* to the great obstruction

struction of Juſtices, &c. Which upon ſolemn Argument was by the Judges reſolved, to be an inſufficient Cauſe of Fining and Committing them; and they were diſcharged, and afterwards brought Actions for their Damage. *The Reaſons of which Judgment are reported by Judge* Vaughan, *and amongſt them he uſeth theſe that follow, which I ſhall give you in his own Words.*

Fol. 140. "One fault in the Return is, that the Jurors are not ſaid to have acquitted the Perſons indicted, againſt full and manifeſt Evidence, *corruptly* and *knowing the Evidence to be full and manifeſt againſt the ſaid Perſons indicted*; for how manifeſt ſoever the Evidence was, if it were not manifeſt to them, and that they believed it ſuch, it was not a *finable Fault, nor deſerving Impriſonment:* Upon which difference, the Law of puniſhing Jurors for falſe Verdicts, principally depends."

And, *Fol.* 141. "I would know, whether any thing be more common, than for two Men, Students, Barriſters, or Judges, to deduce contrary and oppoſite Concluſions out of the ſame Caſe in Law? And is there any difference, that two Men ſhould infer diſtinct Concluſions from the ſame Teſtimony? Is any thing more known, than that the ſame Author, and Place in the Author, is forcibly urg'd to maintain contrary Concluſions, and the Deciſion hard, which is in the Right? Is any thing more frequent in the Controverſies of Religion, than to preſs the ſame Texts for oppoſite Tenets? How then comes it to paſs, that two Perſons may not apprehend with Reaſon and Honeſty, what a Witneſs, or many ſay, to prove in the Underſtanding of one, plainly one thing, but in the Apprehenſion of the other, clearly the contrary thing? Muſt therefore one of theſe merit *Fine and Impriſonment*, becauſe he doth that, which he cannot otherwiſe do, preſerving his Oath and Integrity? And this is often the Caſe of the Judge and the Jury."

And, *Fol.* 142. "I conclude therefore, That this Return, charging the Priſoners to have acquitted *P.* and *M.* againſt full and manifeſt Evidence, firſt and next, without ſaying, that they did *know and believe that*

Evidence to be full and manifeſt againſt the Indicted Perſons, is no *Cauſe of Fine and Impriſonment*.

In the Margine of that Fol. 142. it is thus noted: "Of this Mind were ten *Judges* of eleven. The Chief Baron *Turner* gave no Opinion, becauſe not at the Argument."

And in the ſame *Fol.* 142. he ſaith, "The Verdict of a Jury, and Evidence of a Witneſs, are very different things in the Truth and Falſhood of them: A Witneſs ſwears but to what he hath heard or ſeen generally, or more largely, to what hath fallen under his Senſes: But a Jury-man ſwears to what he can infer and conclude from the Teſtimony of ſuch Witneſſes, by the Act and Force of his Underſtanding, to be the Fact enquired after; which differs nothing in Reaſon, tho much in the Puniſhment, from what a Judge, out of various Caſes conſider'd by him, infers, to be the Law in the queſtion before him.

"If the meaning of theſe Words, *finding againſt the Direction of the Court*, in matter of Law, be, That if the Judge, having heard the Evidence given in Court (for he knows no other) ſhall tell the Jury, upon this Evidence, the Law is for the Plaintiff, or for the Defendant, and you are under the Pain of Fine and Impriſonment to find accordingly, and the Jury ought of Duty ſo to do; then every Man ſees, that the Jury is but a troubleſome Delay, great Charge, and of no uſe in determining Right and Wrong; and therefore the Trials by them may be better aboliſhed than continued: Which were a ſtrange new found Concluſion, after a Trial ſo celebrated for many hundred Years."

"It is true, if the Jury were to have no other Evidence for the Fact but what is depoſed in Court, the Judge might know their Evidence, and the Fact from it, equally as they, and ſo direct what the Law were in the Caſe; though even then, the Judge and Jury might honeſtly differ in the Reſult from the Evidence, as well as two Judges may, which often happens; but the Evidence

Evidence which the Jury have of the Fact, is much otherwise than that: For,

1. Being returned of the Vicinage, where the Cause of Action ariseth, the Law supposeth them thence to have sufficient Knowledge to try the Matter in Issue (and so they must) though no Evidence were given on either side in Court; but to this Evidence the Judge is a Stranger.

2. They may have Evidence from their own Personal Knowledge, by which they may be assured, and sometimes are, that what is deposed in Court is absolutely false; but to this the Judge is a Stranger, and he knows no more of the Fact, than he has learned in Court, and perhaps by false Depositions, and consequently knows nothing.

3. The Jury may know the Witnesses to be stigmatized and infamous, which may be unknown to the Parties, and consequently to the Court.

Fol. 148. "To what end is the Jury to be returned out of the Vicinage, where the Cause of Action ariseth? To what end must Hundredors be of the Jury, whom the Law supposeth to have nearer knowledge of the Fact, than those of the Vicinage in general? To what end are they challenged so scrupulously to the Array and Poll? To what end must they have such a certain Freehold, and be *Probi & Legales homines*, and not of Affinity with the Party concerned? To what end must they have, in many Cases, the View, for exacter Information chiefly? To what end must they undergo the Punishment of the villainous Judgment, if, after all this, they implicitly must give a Verdict by the Dictates and Authority of another Man, under Pains of Fines and Imprisonment, when sworn to do it according to the best of their own Knowledge?"

"A Man cannot see by another's Eye, nor hear by another's Ear; no more can a Man conclude, or infer the thing to be resolved by another's Understanding, or Reasoning; and though the Verdict be right, the Jury give; yet they, being assured that it is so, from

their own Understanding, are forsworn, at least in *foro Conscientiæ*, in their own Consciences.

Fol. 149. "And it is absurd to fine a Jury for finding against their Evidence, when the Judge knows but Part of it; for the better and greater Part of the Evidence may be well unknown to him, and this may happen in most Cases, and often doth." Thus far the good Judge *Vaughan*.

It is true, in *Wharton*'s Case they were fined for giving a Verdict against the Direction of the Court; but the Judges were of Opinion, That there had been some very undue Practices to procure that Verdict. *Yelv.* 23.

They were also fined and committed in *Wagstaffe*'s Case, and upon an *Habeas Corpus* brought, they were not bailed; but this must necessarily be for some Misdemeanor, though it is not mentioned in the Case, and not for refusing to find a Verdict according to the Evidence, because they were not fined equally, which they would have been, if their supposed Fault had been equal. *Hardres*, 409.

In Cases of Life and Member, if they cannot agree on their Verdict at the Assizes, they must be carried on the Circuit till they do agree. 1 *Vent.* 97.

If after they are gone from the Bar, one of them calls a Witness who was sworn before, and had given his Evidence in the Cause, and then desires him to repeat it again, which he did, this is a Misdemeanor, and the Verdict shall be set aside. *Cro. Eliz.* 189.

And, though they cannot be punished upon a pretence of finding a Verdict contrary to Evidence; yet, for these and many other Misdemeanors, they may be fined. I shall instance in some more (*viz.*) If an obstinate Juryman will keep his Fellows together, by disagreeing with them, without giving any Reason, or if he withdraw from them, he may be fined and committed, because he is sworn well and truly to try the Issue, and therefore to be resolute without a Cause, or depart from the rest, is a Misdemeanor.

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In *Baynes* his Case, the Jury had agreed on two Verdicts, intending to cancel one if the Court should be satisfied of the other. *Cro. Eliz.* 778.

So if they cast Lots, whether to find for the one or the other, this is a great Misdemeanor. 2. *Lev.* 140, 205.

If they eat or drink *before they bring in their Verdict*, they are to be fined; and so they are if they eat and drink *before or after they are agreed.* But, though they are to be fined, the Verdict shall stand good if they eat, *&c.* at their own Charge; but if at the Charge of the Party for whom they find, then it shall be set aside. 1 *Leon.* 133. *Dyer* 137.

And some of them have been fined for having Figs and Pippins in their Pockets, when they were withdrawn to consider of their Verdict, though they did not eat them. 4 *Leon.* 133. *Moor*, 599.

Though the Law entrusts the Sheriff to return the Jury, yet the Parties have the Liberty to *Challenge* them, (*i. e.*) to except against any who are returned, which they may do against the whole Panel, and then it is called, a Challenge to the *Array*, or against some particular Persons, and then it is called, a Challenge to the *Polls*.

A Principal Challenge to the *Array* is, where the Sheriff is of Kin to the Party; but in such Case he must shew how and in what Degree of Kindred; so if the Jury is returned at the Desire of the Party, or if either of them have an Action depending against the *Sheriff*.

So, if a *Peer* be returned of the Jury, in the Case of a common Person; so where a Peer is Defendant, and a *Knight* is not returned of the Jury; but if the Plaintiff in such Case will not except, the Defendant cannot.

Any particular *Juror* may be challenged, who hath not ten Pounds *per Annum*. Formerly the Sufficiency of a Jury-man, as to Estate, was left to the Discretion of the Judge: The first Statute as to this Matter, was *Anno* 2 *H.* 5. *cap.* 3. by which it was enacted, That he should have forty Shillings *per Annum*, which, by the Statute, was increased to ten Pounds *per Annum*, either

either of Freehold or Copyhold; and so it still continues.

It is a good Challenge, if there be any *Malice* or *Favor* between the Parties and Jurors, and as to the last, it shall be presumed there is *Favor*, if the Juror is of Kin to either Party, though ever so remote; or if there is any Affinity by Marriage; and it hath been adjudged a good Challenge, that a Juror is Godfather to the Defendant.

If a Juror hath given a Verdict already in the same Cause, this is a Principal Challenge to him; but then the Party must produce the Record.

Though in the Case of the Regicides, it was resolved, That if an Indictment is found against several of them by the Grand Jury, and some of them are found Guilty by the Petty Jury, and two or more of that Jury are returned to try the rest, it is no Challenge to say, That they have already given their Verdict against others who were indicted for the same Offence; because in Law it is a several Indictment against every one, and the Jury are to give their Verdict upon particular Evidence against such Criminals; and it is no Consequence, That because they found one Guilty, therefore they must find the rest so too.

This is very true, but it is not so fair a Trial: For though it doth not necessarily follow, that the finding one Guilty must induce them to find the other Guilty likewise, yet it is a very strong Presumption that they will do it.

There was formerly a Question about a Right to a Way, and before the Trial one affirmed, That there was such a Way, and that it would be very inconvenient if it should not be allowed as a Way; and this Person being returned of the Jury, he was challenged and it was allowed to be a good Cause.

So, where a Man indicted for a Battery done at *Canterbury*, and one of the Grand Jury who had found the Battery, was returned of the Petty Jury, to try the Cause, he was challenged; and held good. *Sid.* 244. It was likewise held a good Challenge, because the Pro-

secuto

ecutor had been entertained at the House of the Jury-
nan. 1 *Vent.* 309.

THERE are many more Challenges *to the Favor*, which
re not proper to mention here; but all of them are
ft to the Discretion of two Men of the Jury, who
e called the *two Tryers*, because they are sworn by
he Court *to try* whether there is any Cause of Favor
r not.

BUT there can be no Challenge, either to the Ar-
ay or Polls, till there is a full Jury, which may be
s well by a *Tales*, as if all of the principal Panel ap-
ear; but it is too late after they are sworn. But
hough Trials by Juries is one of the Fundamental
arts of our Constitution, yet there were formerly very
reat Inconveniencies in returning them; for the She-
iff, who is the proper Officer in such Cases, would
ometimes summon as many as he pleased, and by this
eans the People were oppressed.

THEREFORE, by the Statute, *Westminster* 2. *cap.* 38.
heriffs were ordered to summon in one Assize twenty-
our, and no more.

BUT, it hath been adjudged, That this old Statute
xtends only to Jurors returned in Civil Actions, and
ot for the Trials of Criminal Causes: For, in such
ase, the Sheriff might be commanded by the Court
o return more, and it is usual to return sixty, because
f the peremptory Challenges.

BUT, in Civil Causes, if there are not enough of the
rincipal Panel, the Sheriff may return a *Tales* out of
ome other Panel of the Jurors then attending; and
f such *Tales* Men withdraw and will not serve, the
udge may fine them.

EVERY Summons of Persons, who are qualified to
erve on Juries, shall be made by the Sheriff, or his
roper Officer, and that at least six Days before the
rial, shewing to the Person the Warrant, under Seal
f the Office; and if such Juror is not at his usual
lace or Habitation, then the Sheriff, or Officer, may
ave a Note in Writing under his Hand to that effect,

at

at his Dwelling-House, with some Person inhabiting there.

The Return made to the Justices shall be a good Excuse to the Sheriff, though he summon one who is not qualified, and on Action brought against him, the general Issue may be pleaded, and he may give this Act in Evidence; and if the Plaintiff be nonsuited, or discontinue, or a Verdict against him, then he shall pay treble Costs; and if the Sheriff, or his Deputy, or Bailiff, summon any Freeholder, or Copyholder, otherwise than as aforesaid, or neglect his Duty, or excuse any Person for Favor or Reward, or allow any Exemption to one under Seventy Years old, to forfeit twenty Pounds to the Party grieved, or to him, who will sue for the same.

There must be but one Panel of forty-eight Freeholders and Copyholders, and no more returned on the *Grand Jury*, each having Lands of eighty Pounds *per Annum*. See the Statute 7 & 8 *W. cap.* 32.

All Petty Jurors shall have in their own Name, or in trust for them, in the same County where Trials are to be had upon Issues joined, ten Pounds *per Annum*, at least, above Reprises; and this must be either Freehold or Copyhold, or in Rents in Fee-simple, or Fee-tail, or for their own or some other Person's Life; and in *Wales* six Pounds *per Annum*; and if returned of a lesser Estate, it shall be a good Cause of Challenge, and the Party returned shall be discharged upon such Challenge, or upon his own Oath; nor shall the Issues of any Juryman making default be saved, but by the special Order of the Court, for some reasonable Cause proved upon Oath.

Sheriffs, Coroners, and other Ministers, who shall return any Person to have been summoned by them, unless they have been summoned at least six Days before the Day on which they are to appear, or taking any Reward to excuse the Appearance of a Juror, forfeits for every Offence ten Pounds to the Crown.

And, likewise if they return any Person not having

en Pounds *per Annum*, or ſix Pounds *per Annum* in *Wales*, ſhall forfeit five Pounds to the Crown.

But, the Qualification in *Ireland*, is but forty Shillings by the Year. And in Cities, *Freedom* is the uſual Qualification required.

An Attorney was turned over the Bar, for giving Directions to the Sheriff what Perſons he would have returned.

Now, my Friends, ſee what a glorious Safeguard, what an impregnable Bulwark your great Anceſtors have provided for the Rights and Liberties of their Off-ſpring, in the moſt wiſe and noble Inſtitution of theſe *popular Judges*, the Juries! Nothing can annoy the Freedom and Rights of the meaneſt Member of the Community, while *Juries* anſwer the Ends of their Inſtitution. What *Tyrant* would dare inſult, or abuſe the pooreſt and loweſt Creature, had he been aſſured, that *Juries* would reſolutely do their Duty, in puniſhing him? None certainly. Remember, then, there is no *Malefactor*, or Law-breaker, under the Crown, exempt from the Juriſdiction of a *Grand Jury*. A *Middleſex Jury* had the Spirit *to preſent* the *preſumptive Heir* of the Crown of *England*. And nothing but the Ignorance, or Corruption of *Juries*, could have caſt them down, from the *Pre-eminence* and *Superiority* to the *King's Judges*, which our Conſtitution gives them, to the contemptible Circumſtances, in which they are viewed, by many *modern Tyrants*, as well, as *ſome Judges*: For, no Court can proceede to Judgment, in any Cauſe, civil, or criminal, where a Matter of *Fact* is conteſted; till the Certainty, or Nullity, of that *Fact*, be determined by a *Jury*; who are, of *Facts*, the *only proper Judges*, and, in many Caſes, of *Law*, as well, as of *Facts*; whereas the *King's Judges*, are Judges of *Law* and *Equity* only.

Most of you, my Brethren, are, ſometime, or other, called, or likely to be called, to ſerve on *Juries*. When you conſider the Importance of the Office, and what Miſchief may be done to ſome innocent

Men

Men, or to the whole *Common-Wealth*, for want of Men of Sense and Virtue, on *Juries*, you must think it your indispensable Duty, to make yourselves acquainted with the Office of a *Juror*, and, whenever you are legally called thereto, to attend and discharge the Trust, with becoming Integrity, Fidelity, and Fortitude. As there is no Crime, of which you may not take Cognisance; remember, that every Crime that passes uncensured, is a Wound given to the Constitution of your Country, to which, the Neglects of the *Jury* make *them* Accessaries. Incroachments are made by slow and imperceptible Degrees and the slightest Wounds, frequently repeated, must become fatal. The same Common Rule of Law and Right bind *the little* and *the Great*, alike. If you have the Virtue to punish *the Great*, *the little Offenders* will, of Course, be suppressed. You are, generally, pretty well instructed in the Punishment of common Trespasses, of *Breaches of the Peace*, *Robbery*, *Felony* and the like, in the Courts. But, I am sorry to say, that Crimes of an higher Nature have been, for the most part, over-looked, in the Charge of the Generality of *Judges* to *Juries*, since the *Law* became a *Trade*, and *Judges* were rendered *dependent Mercenaries*.

It is, no doubt, of signal Service to Society, to punish common Trespasses. But, then, Crimes against the *Head*, or *Members* of the State, Crimes against Liberty and the Constitution of our Country should by no means be permitted to pass unpunished. If then, it be the Duty of *our Lords*, the Judges, to instruct a *Grand Jury* to present, or indict *Felons*, *Murderers*, it can not be less their Lordships Duty, to pronounce the Law and Power of *Juries* and their indispensable Obligation to present all Offenders against the Established Prerogative of the Crown, the Authority and Privilege of Parliament and the *fundamental Rights*, *Privileges* and *Power* of Juries. If this were duly done, We should not have had so many of the little, vile Creatures of *arbitrary Ministerial Power*, who by the most base and Scandalous Artifices, have cre-

ept into the high Offices of Judges, presume to dic-
te Verdicts to their *Superiors*, GRAND and PETTY
URIES, and to over-awe and insult them, for not re-
iving and observing their *arbitrary Dictates*, Slavishly
nd implicitly.

MEN of Sense and Freedom, should not look with more jealous and Watchful Eye, on professed Ene-
nies, foreign, or domestic, than on the Conduct of
he Officers and Ministers of the State. A weak, or
Corrupt Administration must ever prove more dange-
ous to a Free State, than a foreign Army. Wounds
iven by the later, are, generally, curable, by time
nd care; but those, by the former are, for the most
art, incurable.

LET me beseech you, then, O! you Sons of Liberty, hat while you are punishing the *little Malefactors*, the Petty Rogues, that pilfer, or murder one another, ou do not suffer your sight to be diverted from the *Great Murderers of your Country*. See if there be any Men, who, instead of administring Law, with Mer-
y, Justice and Liberty, to all Members of the com-
munity, without Distinction; *rob*, not only, the *Head*, ut the Members of our Government, *great* and *small*, f their Inherent Rights and Privileges; let the Rank nd Dignity of such, be what it may, in vulgar Accep-
ation; it is the indispensable Duty of every *Grand Jury* to present them. If you should ever see any of he *King's Judges* taking upon them a *legislative*, instead f a *judicial*, Power; *dispensing with*, *denying*, or *with-holding* the known, established Laws, or executing the *Dictates* of any *foreign Legislature*, or *Jurisdiction*, un-
pproved by our Parliament; if any such should pre-
ume to *influence*, or *over-awe* JURIES, by Threats, or ther illicit Measures; or unlawfully to strip *Juries* of heir Power, or Privileges, or to censure, or abuse hem, for making any just and lawful *Presentment*; or finding or rejecting any *Bill*, or for finding any rue *Verdict*; or, if any of these Officers, in any other Manner commits a breach of his Oath and Duty; that *Grand Jury*, that does not, on the first fair Oppor-
unity, present such an *upstip*, *hireling Tyrant*, as a

Traitor

Traitor and an *Enemy* to his *King* and *Country*; is perjured and infamous.

If, then, you have any Regard to your Glorious Conſtitution; if you wiſh to enjoy the benefits of the beſt form of Government in the known World, for your own Life, and to hand it, ſecure, down to Poſterity, you, that ſerve on *Grand Juries*, hold a watchful Eye, not only, on the Behavior of every individual, private Member of the Community, within your City; but, more eſpecially, you muſt ſtrictly attend to the public, as well, as private Conduct of all, that are concerned in the Adminiſtration, from the *King*'s *Lieutenant*, to the loweſt *Conſtable*, or *Bailiff*. By this Means, you muſt revive the ſinking Power and Dignity of *Juries* and reſtrain the moſt potent Malefactors. But, if through the Prevalence of any evil Habit, that may, hereafter, by length of Corruption, be contracted, you ſhould not be able to ſucceede, your laſt Reſourſe muſt be to Parliament; where, while the Members are *choſen* for juſt Merit and due Qualification only, you can not poſſibly fail of the deſirable Succeſs. And thoſe, who do not *return* Members, upon theſe Conſtitutional Principles, deſerve nothing better, than, what they may ſooner or later expect; *Chains* and *Slavery*.

Let me conjure you, then, my beloved Brethren, to avert the impending Curſe; and, by acting like Chriſtians, like Men, vindicate your Conſtitution, aſſert your Rights, and be Free while you may.

Dubliu, March 1ſt. 1748.

YOURS, &c.

C. Lucas